
In The United States
Circuit Court of Appeals
For the Ninth Circuit 10

WONG YING WING,

Appellant,

vs.

MARIE A. PROCTOR, United States Commissioner
of Immigration, at the Port of Seattle,

Appellee.

UPON APPEAL FROM THE DISTRICT
COURT OF THE UNITED STATES, FOR
THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION.

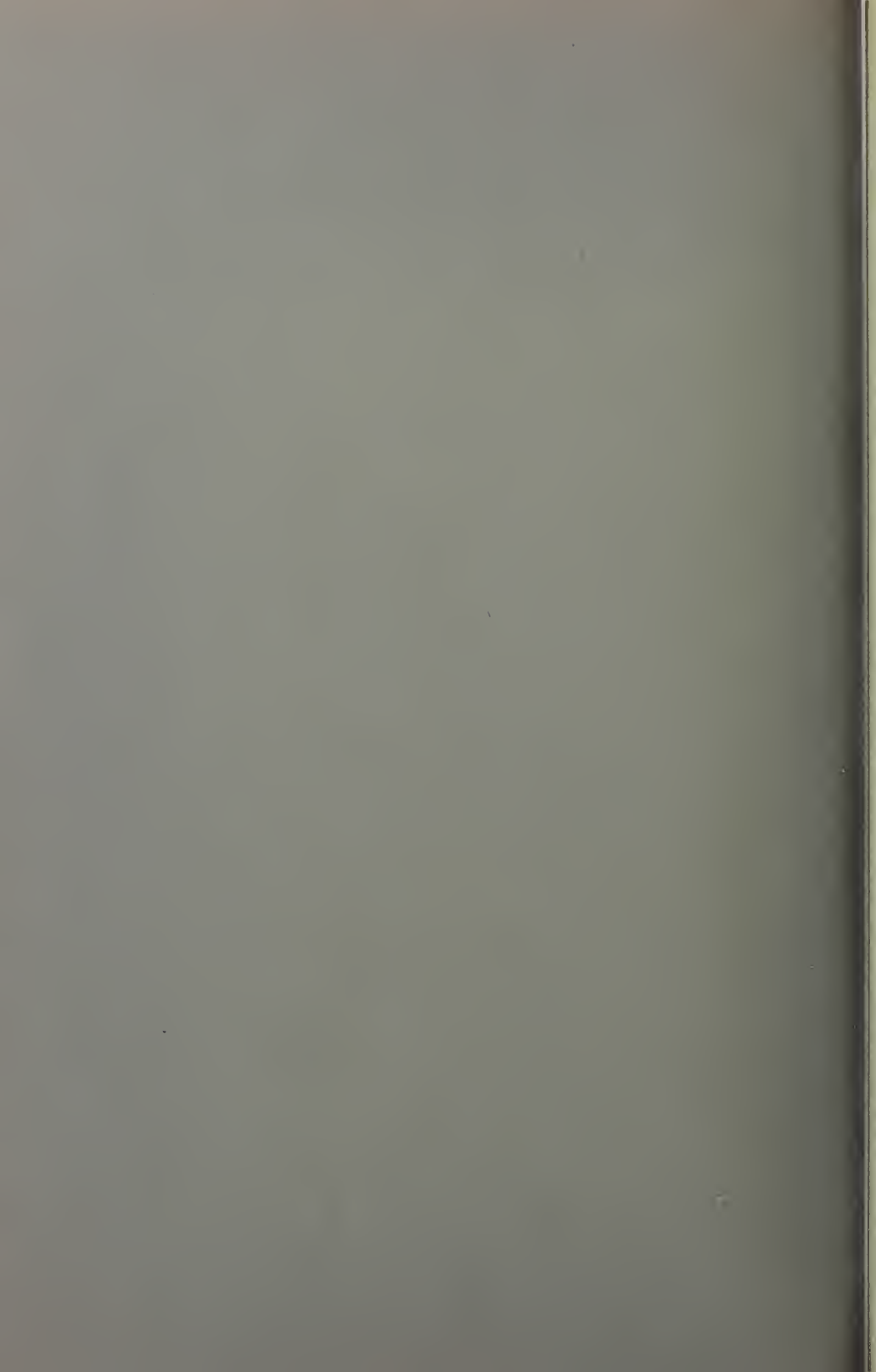
HONORABLE JOHN C. BOWEN, *Judge*

Reply Brief of Appellant

EDWARD H. CHAVELLE,
Attorney for Appellant,

WALTER H. NEWTON,
Of Counsel.

315-321 Lyon Building,
Seattle, Washington.



In The United States
Circuit Court of Appeals
For the Ninth Circuit

WONG YING WING,

Appellant,

vs.

MARIE A. PROCTOR, United States Commissioner
of Immigration, at the Port of Seattle,

Appellee.

UPON APPEAL FROM THE DISTRICT
COURT OF THE UNITED STATES, FOR
THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION.

HONORABLE JOHN C. BOWEN, *Judge*

Reply Brief of Appellant

The appellee raises the point on page 4 of her brief that the appellant in this case is not entitled to a judicial determination of his claim of American citizenship. The appellee says that the case of *Ng Fung Ho vs. White*, 259 U. S. 276, is contrary to the contention that the appellant is entitled to

a judicial determination of his claim. It further states that the question is definitely answered adversely to the appellant in *Yoshimasa Nomura vs. United States*, 297 Fed. 191, CCA9. The former case lays down the rule that Chinese claiming citizenship before immigration authorities are entitled upon a petition for a writ of habeas corpus under the Fifth Amendment, to a judicial hearing. The only limitation upon this rule is that the claim to American citizenship must be in good faith. The case goes on to explain the justice of such a rule and the theory behind it.

In all of these cases the question of citizenship itself, which is an issue to the merits of the controversy, is also a jurisdictional fact giving rise to a judicial determination. Therefore, if the court did not determine the question of citizenship it could not get jurisdiction over a case of this sort, and deportation would follow upon a purely executive order. In other words, if the courts were bound by the rulings of the administrative boards upon the question of citizenship they could never assume jurisdiction of a case involving the question of citizenship.

The case sets out a very good example of this in making an analogy to questions arising under mili-

tary law. The general rule is that persons who are not members of a military organization are not subject to martial law in peace times. Therefore, such persons have a right to appeal to the courts by a writ of habeas corpus to determine the question of whether or not they are members of a military body, rather than private citizens. Thus the question of their civil or military status is a condition precedent to their right to resort to the courts. If this question, the question of their status as civilians or members of a military body, could be conclusively determined by the military authorities, then such persons would be forever barred from the right of recourse to the courts, regardless of their status.

As to the appellee's contention that the question is definitely answered adversely in the case of *Yoshimasa Nomura vs. United States*, 297 Fed. 191, CCA9, the appellant does not believe from a reading of that case that there is any attempt to overrule the Supreme Court case which has just been referred to.

On page 11 the appellee seeks to set up the doctrine that the testimony of a Chinese citizen "is in a special class and does not stand up unless corroborated," and cites the Chinese exclusion case,

130 U. S. 581, *Fong Yue Ting vs. United States*, 149 U. S. 698, and *Li Sing vs. United States*, 180 U. S. 486. The *Li Sing vs. United States* case in no way supports this novel contention, but merely describes the statute requiring Chinese aliens applying for admission to the United States under the status of merchants to prove by two white witnesses that such has been their occupation. Thus the requirement in this case is purely statutory and based upon the policy of Congress for determining the status of Chinese aliens.

The Chinese exclusion case is in no way in point here, as in the *Li Sing* case. This case, however, is a very interesting case to read, in that it traces the history of Chinese immigration into the United States, together with a review of the treaties and legislation affecting it, up to the Chinese labor exclusion statute, which the court passed upon.

We are wholly in accord with the statement of the appellee on page 8: "We may add that the mere fact that a decision of a court or tribunal may be wrong is no indication of an unfair hearing." However, where, in this case, the facts and records show that the Board of Special Inquiry was completely diverted from the question at issue by collateral questions, we think the fact is clearly established

that appellant was denied a fair hearing. See *Damon ex rel. Wong Bok Ngun vs. Tillinghast*, 63 Fed. 2nd Series, 710. Quoting:

“The immigration tribunals appear to have been almost completely diverted, by the collateral questions above referred to, from a consideration of the real issue on which the case turns. The way in which they dealt with it was not that fair and reasonable determination of the applicant’s claim—which it is to be remembered involves American citizenship—to which he was entitled.”

Respectfully submitted,

EDWARD H. CHAVELLE,
Attorney for Appellant,

WALTER H. NEWTON,
Of Counsel. per.
(545)